

Patrick R. Kitchen, Esq. (SBN. 162965)  
**THE LAW OFFICE OF PATRICK R. KITCHIN**  
 565 Commercial Street, 4<sup>th</sup> Floor  
 San Francisco, CA 94111  
 415-677-9058  
 415-627-9076 (fax)  
 Attorneys for Plaintiffs Janis Keefe, Corinne Phipps,  
 Justin Kiser and Renee Davis

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ANN OTSUKA, an individual; JANIS KEEFE, ) Case No.: C-07-02780 SI  
 an individual; CORINNE PHIPPS, an )  
 individual; and JUSTIN KISER, an individual; )  
 individually and on behalf of all others similarly ) **DECLARATION OF PATRICK R.**  
 situated, RENEE DAVIS, an individual; ) **KITCHIN IN SUPPORT OF**  
 individually and on behalf of all others similarly ) **PLAINTIFFS' REQUEST FOR ORDER**  
 situated ) **PERMITTING NOTICE TO CLASS**  
 ) **(FEDERAL RULE OF CIVIL**  
 ) **PROCEDURE 23(c)(2))**

Plaintiffs,  
 vs.

POLO RALPH LAUREN CORPORATION; a )  
 Delaware Corporation; POLO RETAIL, LLC., a )  
 Delaware Corporation; POLO RALPH )  
 LAUREN CORPORATION, a Delaware )  
 Corporation, doing business in California as )  
 POLO RETAIL CORP; and FASHIONS )  
 OUTLET OF AMERICA, INC., a Delaware )  
 Corporation ) **JUDGE: Hon. Susan Illston**  
 ) **LOCATION: Courtroom 10, 19<sup>th</sup> Floor**  
 Defendants. ) **450 Golden Gate Avenue**  
 ) **San Francisco, California 94102**

I, Patrick R. Kitchen, declare:

1. I am an attorney at law licensed to practice before the Courts of the State of California,  
 and am admitted to this Federal District Court. I serve as class counsel in this case, and make this  
 declaration based on personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of correspondence I sent to Polo's lead counsel, William Goines, on August 8, 2008.

3. Attached as Exhibit 2 is a true and correct copy of an email I sent to Mr. Goines on August 14, 2008.

4. Attached as Exhibit 3 is Plaintiffs' proposed post card notice. The first page is the front side of the post card and will include the class members' names and addresses, plus a tracking code used by Rosenthal & Company to expedite mailing. The second page will be printed on the back of the post card.

5. Attached as Exhibit 4 is Plaintiffs' proposed long form notice, which will be lodged on [www.poloclassaction.com](http://www.poloclassaction.com).

6. Attached as Exhibit 5 is a true and correct copy of Rosenthal & Company's firm C.V.

7. I have not received a response to my requests to Polo's counsel regarding these notice forms.

8. I have made several requests to Polo's counsel to provide my office with contact information for the class members, including their last known addresses, telephone numbers and Social Security Numbers. Plaintiffs have also made this request formally through written discovery. While Polo's counsel, William Goines, has stated that Polo is working on obtaining contact information, excluding the Social Security Numbers, he has only stated that they expect to be able to produce the data in "early September." Polo previously produced redacted data showing the names and other work history data on class members. Polo has not informed me of any reason contact information cannot be produced now. Based on my discussions with Mr. Goines, it appears that Polo is delaying the production of the information on class members until Polo has finished compiling data relating to wages paid. Despite my request that Polo produce contact information on class members on a rolling basis, that is, to produce data that is readily available now, Polo appears to be holding up all discovery responses until it can compile the wage and time keeping data Plaintiffs have also requested.

1 9. I have explained to Mr. Goines that Social Security Numbers of class members will  
2 provide us with our best chance of reaching the vast majority of class members due to the added  
3 strength of performing skip trace research based on credit header research.

4 10. My office will protect the confidentiality of the Social Security Numbers of class  
5 members, who are, of course, our clients. The data will only be used for purposes of locating class  
6 members and will be provided to Rosenthal & Company under the protections of the Protective  
7 Order in place in this lawsuit.

8 I declare or affirm under penalty of perjury under the laws of the United States of  
9 America that the foregoing is true and correct and that this declaration was made on August  
10 19, 2008, in San Francisco, California.

11 /s/ Patrick R. Kitchen  
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Exhibit 1

THE LAW OFFICE OF  
PATRICK R. KITCHIN

August 8, 2008

***Via Facsimile and U.S. Mail***

Mr. William Goines, Esq.  
Greenberg Traurig, LLP  
1900 University Avenue, 5th Floor  
East Palo Alto, CA 94301

Re: *Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.*  
Case Number C 07-02780 SI

Dear Bill:

Enclosed is a long-form notice of pendency of class action we wish to provide to the class at this time.<sup>1</sup> The long-form notice will be lodged on our informational website, [www.poloclassaction.com](http://www.poloclassaction.com). Class members will be mailed a post card notice, also enclosed, which directs them to visit our website for further information. We have tried to make the notices as straightforward and neutral as possible, but I would welcome any suggestions you might have regarding content issues.

If we can agree on the notice forms, I would like to file a Stipulation and Proposed Order for the Court's review and approval. (A proposed Stipulation is enclosed.) I propose we provide class members 45 days from the date of mailing to mail opt out notices. We would like to get this Stipulation to the Court by the end of next week.

To ensure that notice is received by all members of the class, Rosenthal & Company will need the Social Security Numbers of our clients. As we have discussed, the Social Security Numbers will give us the best chance of locating all class members. Of course, we will institute measures to ensure our clients' Social Security Numbers are protected from disclosure to anyone other than our offices and Rosenthal's firm.

Very truly yours,

Patrick R. Kitchen

Enclosures

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<sup>1</sup> We intend to use Rosenthal & Company as the class administrator for this project.

Patrick R. Kitchin, Esq. (SBN. 162965)  
**THE LAW OFFICE OF PATRICK R. KITCHIN**  
 565 Commercial Street, 4<sup>th</sup> Floor  
 San Francisco, CA 94111  
 415-677-9058  
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 Attorneys for Plaintiffs Janis Keefe, Corinne Phipps,  
 Justin Kiser and Renee Davis

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ANN OTSUKA, an individual; JANIS KEEFE,	)	Case No.: C-07-02780 SI
an individual; CORINNE PHIPPS, an	)	
individual; and JUSTIN KISER, an individual;	)	<b>STIPULATION AND [PROPOSED]</b>
individually and on behalf of all others similarly	)	<b>ORDER RE CLASS NOTICE</b>
situated, RENEE DAVIS, an individual;	)	
individually and on behalf of all others similarly	)	
situated	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
POLO RALPH LAUREN CORPORATION; a	)	
Delaware Corporation; POLO RETAIL, LLC., a	)	
Delaware Corporation; POLO RALPH	)	<b>JUDGE: Hon. Susan Illston</b>
LAUREN CORPORATION, a Delaware	)	<b>LOCATION: Courtroom 10, 19<sup>th</sup> Floor</b>
Corporation, doing business in California as	)	<b>450 Golden Gate Avenue</b>
POLO RETAIL CORP; and FASHIONS	)	<b>San Francisco, California 94102</b>
OUTLET OF AMERICA, INC., a Delaware	)	
Corporation	)	
	)	
Defendants.	)	

Based on the stipulation of counsel to the parties and good cause appearing, IT IS  
 HEREBY ORDERED that Plaintiffs are granted permission to provide notice of pendency of this  
 class action to members of the certified class in the forms set forth in Exhibits 1 and 2 to this  
 Stipulation and Order.



1 A post card class notice of pendency, in the form of Exhibit 1, may be mailed to class  
2 members through claims administrator Rosenthal & Company, LLC. Rosenthal & Company will  
3 determine the current mailing addresses of class members by first running a United States Postal  
4 Service Notice of Address Change search based on the last known addresses provided by  
5 Defendants. Plaintiffs' counsel will attempt to locate class members whose notices are returned as  
6 undeliverable by conducting credit header searches through Merlin Information Services' secure  
7 credit header database. Rosenthal & Company will re-mail the post card notices to all addresses  
8 identified through the credit header database.

9 Class members shall have 45 days from the date the notices are mailed to provide notice of  
10 their desire to opt out of the class by mailing a notice of opt out to class counsel.

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12 Dated: \_\_\_\_\_

13 \_\_\_\_\_  
14 HON. SUSAN ILLSTON  
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1 IT IS HEREBY STIPULATED by and between the parties hereto, through their  
2 respective attorneys of record, and with the Court's permission, that Plaintiffs may provide  
3 notice of pendency of this class action in the forms of Exhibits 1 and 2.  
4

5 Dated: August \_\_, 2008

The Law Office of Patrick R. Kitchin

6  
7 By: \_\_\_\_\_

8 Patrick R. Kitchin, Esq.

9 Attorneys for Plaintiffs' Class  
10

11 Dated: August \_\_, 2008

Greenberg Traurig, LLP

12 By: \_\_\_\_\_

13 William J. Goines, Esq.

14 Attorneys for Defendants Polo Ralph Lauren  
15 Corporation; Polo Retail, LLC; Polo Ralph  
16 Lauren Corporation, doing business in  
17 California as Polo Retail Corporation; and  
18 Fashions Outlet of America, Inc.  
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# **IMPORTANT LEGAL NOTICE**

**FORMER EMPLOYEES OF  
POLO RALPH LAUREN  
CORPORATION AND ITS  
AFFILIATED COMPANIES  
IN CALIFORNIA**

***PLEASE READ OTHER SIDE  
TO LEARN ABOUT YOUR  
LEGAL RIGHTS***

### **YOUR LEGAL RIGHTS**

According to our records you are a member of a class for whom a class action has been filed in Federal Court, entitled ***Otsuka, et al., v. Polo Ralph Lauren Corporation, et al.***  
**Case No. C 07-02780 SI (USDC, ND CA).**

Class members are former sales associates or cashiers who worked for Polo Ralph Lauren Corporation, Polo Retail, LLC, or Fashions Outlet of America, Inc. in a retail or outlet store in California between May 30, 2002 and the present. This lawsuit seeks monetary recovery for unpaid wages.

To learn more about this Class Action, including your right to opt out of the class, visit: [www.poloclassaction.com](http://www.poloclassaction.com).

This postcard is only a brief summary of the full Notice that is posted on the website. You may also obtain the full Notice by contacting:

Patrick R. Kitchen, Esq.  
The Law Office of Patrick R. Kitchen  
565 Commercial Street, Fourth Floor  
San Francisco, CA 94111  
415.677.9058  
[prk@kitchenlegal.com](mailto:prk@kitchenlegal.com)

## **THIS NOTICE AFFECTS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.**

### **NOTICE OF PENDENCY OF CLASS ACTION**

#### **NOTICE TO FORMER EMPLOYEES OF POLO RALPH LAUREN CORPORATION, POLO RETAIL, LLC, AND FASHIONS OUTLET OF AMERICA, INC. IN CALIFORNIA**

Our records show you are a member of a class for whom a class action has been filed in the United States District Court for the Northern District of California, entitled *Otsuka, et al., v. Polo Ralph Lauren Corporation, et al.*, Case No. C 07-02780 SI. This is a lawsuit brought on behalf of former employees of Polo Ralph Lauren Corporation, Polo Retail, LLC, and Fashion Outlets of America, Inc. The class representatives are Janis Keefe, Corinne Phipps and Renee Davis, all former employees of the defendants.

#### ***Who are members of the Class?***

Class members are former sales associates and cashiers/customer service representatives who worked at a Polo Ralph Lauren Corporation, Polo Retail, LLC, and/or Fashion Outlets of America, Inc. retail or outlet store in California between May 30, 2002 and the present. This case is a class action that seeks monetary recovery of unpaid wages, including unpaid overtime wages, waiting time penalties and punitive damages.

#### ***What is the lawsuit about?***

Plaintiffs allege defendants violated California's employment law and failed to pay their employees all of their wages. Defendants deny the allegations in the Complaint and assert they followed California law. The Court has not yet determined whether the plaintiffs' or the defendants' contentions are correct.

#### ***What are the specific claims?***

- Failure to pay employees for off-the-clock time spent inside the stores, including time employees spent waiting for loss prevention or "bag check" inspections
- Failure to allow employees to take all of their rest breaks
- Failure to pay premium overtime wages
- Failure to timely pay all wages due at the end of employment
- Failure to maintain accurate pay records
- Misclassification of sales employees as being exempt from premium overtime pay

#### ***Class Action Ruling***

The Court has ruled that this lawsuit may be maintained by the representative plaintiffs on behalf of the following class:

"All former sales associates and cashiers who were employed in defendants' retail and outlet stores in the state of California between May 30, 2002 and the conclusion of this action."

The Court also certified two subclasses of former employees of defendants:

1. "All members of the class who were sales associates and were misclassified as exempt inside commissioned salespeople.
2. All members of the class who were sales associates from whom the defendants took back earned wages through its arrears program."

#### ***Estimated Recovery***

Plaintiffs seek to recover back wages, including unpaid overtime wages, civil penalties and punitive damages, as well as interest on these amounts, attorney's fees and litigation costs. Individual class member's recoveries will depend on several factors, including the amount of time the class members worked for the defendants.

#### ***Rights and Obligations of Class Members***

If you fall with the definition of the class, you will automatically become a class member in this lawsuit. **If you wish to be a member of the class, you do not need to do anything further at this time, and you should NOT SEND an exclusion request.**

As a class member:

- You will be represented by the named class representatives and the attorneys representing the class. You will not be charged for this representation. If the plaintiffs win, plaintiffs' counsel will ask the Court that they be paid reasonable compensation for their representation of the class. However, you may enter an appearance through your own attorney, or on your own, by mailing a Notice of Appearance to the Clerk of the Court, 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, CA 94102. You may also ask the Court for permission to appear as named class co-representative.
- You will receive notice of any rulings affecting your membership in the class and notice of any proposed settlement or dismissal of class claims or any judgment rendered.
- You will be bound by a judgment or other final disposition of the class lawsuit, whether that disposition is favorable or not.
- You will participate, upon meeting any prerequisites set by the Court, in a distribution of any monetary damages recovered in the litigation.
- You should retain all records and documents pertaining to the subject matter of this case, including all wage and employee documents.

- You should notify plaintiffs' counsel, by email to [prk@kitchinlegal.com](mailto:prk@kitchinlegal.com), of any change in your mailing address or email address.
- You will be deemed to have consented to defendants' disclosing certain personally identifiable information about you from defendants' records to counsel for the class so they may represent you and determine the amount of any monetary recovery to which you may be entitled.

***Election to Not Participate in the Class ("Opting Out")***

If you want to be excluded from the class, you must send a written notice of your intent to exclude yourself from the class, with the information below, by mail postmarked no later than \_\_\_\_\_, 2008, to: The Law Office of Patrick R. Kitchin, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111.

Please include your full name, your social security number, your current mailing address, phone number, email address, and a statement that you wish to be excluded from the *Otsuka v. Polo Ralph Lauren* lawsuit.

The choice to exclude yourself from the class has certain consequences, and you may wish to consult an attorney regarding this choice. If you elect to be excluded: (1) you will not be bound by any judgment in the case and will retain any claims you may have against defendants, subject to applicable statutes of limitations, and (2) you will not share in any monetary or other recovery that might be paid if the class representatives are successful in trial or from any settlement.

***Status and Further Information***

This lawsuit may continue on for a year or more. If you have any questions concerning the matters in this notice, or if you have corrections or changes to your name or address (so future notices about this case will reach you), please contact plaintiffs' counsel at The Law Office of Patrick R. Kitchin, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111, [prk@kitchinlegal.com](mailto:prk@kitchinlegal.com), (415) 677-9058.

The pleadings and all other records of this litigation may be examined and copied any time during the regular office hours in the office of the Clerk of the Court at the Clerk of the Court, 450 Golden Gate Avenue, San Francisco, CA 94102.

**DO NOT CALL OR WRITE THE COURT FOR ADDITIONAL INFORMATION ABOUT THE CASE.**

Exhibit 2



**Patrick R. Kitchen**

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**From:** Patrick R. Kitchen  
**Sent:** Thursday, August 14, 2008 4:26 PM  
**To:** 'goinesw@gtlaw.com'  
**Cc:** 'Nancy Hudgins'  
**Subject:** RE: Polo Class Action

Bill,

When can I expect to have last known addresses, and telephone numbers for the class? Also, we need to get our post card notice to the printers, so I need to know if you have any concerns with the language.

Thanks,

Patrick

The Law Office of Patrick R. Kitchen  
565 Commercial Street, 4th Floor  
San Francisco, CA 94111  
Phone: (415) 677-9058  
Fax: (415) 627-9076  
[www.kitchenlegal.com](http://www.kitchenlegal.com)

The information in this e-mail and any attachments is confidential and intended solely for the attention and use of the named addressee(s). This information may be subject to legal, professional or other privilege or may otherwise be protected. It must not be disclosed to any person without our authority. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are not authorized to, and must not, disclose, copy, distribute or retain this message or any part of it.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

---

**From:** goinesw@gtlaw.com [mailto:goinesw@gtlaw.com]  
**Sent:** Thursday, August 14, 2008 2:31 PM  
**To:** Patrick R. Kitchen  
**Subject:** RE: Polo Class Action

We were and I am sorry. I have to file a Reply Brief by 2:30.

I spoke with Beth and Joanne this morning and Beth hopes to have the Trade winds time card data for the full price stores soon. I have another call with her Monday but she indicates she has gathered it for the full price stores and is auditing it now. After that she will move on to the outlets. Polo has also found the data base for pre Trade winds for the full price stores and IT is working on the data extraction issue. More on that next week.

Joanne is working on the "modified" 260 data and is looking to having it in a format that can be produced in early September along with the "last known" information for the class.

I have another follow up call for Monday and have been working with other groups for materials. Hopefully I will speak with Ravi tomorrow to see what he has accomplished.

**William J. Goines**  
Greenberg Traurig, LLP  
Silicon Valley Office

8/19/2008



1900 University Avenue, 5th Floor  
East Palo Alto, CA 94303  
Direct: 650-289-7860  
Phone: 650-328-8500 x:7860  
Direct Fax: 650-462-7860  
[goinesw@gtlaw.com](mailto:goinesw@gtlaw.com)  
[www.gtlaw.com](http://www.gtlaw.com)

---

**From:** Patrick R. Kitchen [mailto:[prk@investigationlogic.com](mailto:prk@investigationlogic.com)]  
**Sent:** Thursday, August 14, 2008 1:13 PM  
**To:** Goines, William (Shld-SV-LT)  
**Subject:** Polo Class Action

Bill,

Weren't we were scheduled to talk at 11?

The Law Office of Patrick R. Kitchen  
565 Commercial Street, 4th Floor  
San Francisco, CA 94111  
Phone: (415) 677-9058  
Fax: (415) 627-9076  
[www.kitchenlegal.com](http://www.kitchenlegal.com)

The information in this e-mail and any attachments is confidential and intended solely for the attention and use of the named addressee(s). This information may be subject to legal, professional or other privilege or may otherwise be protected. It must not be disclosed to any person without our authority. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are not authorized to, and must not, disclose, copy, distribute or retain this message or any part of it.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

---

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to [postmaster@gtlaw.com](mailto:postmaster@gtlaw.com).

---

Exhibit 3

# **IMPORTANT LEGAL NOTICE**

**FORMER EMPLOYEES OF  
POLO RALPH LAUREN  
CORPORATION AND ITS  
AFFILIATED COMPANIES  
IN CALIFORNIA**

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Patrick R. Kitchen, Esq.  
The Law Office of Patrick R. Kitchen  
565 Commercial Street, Fourth Floor  
San Francisco, CA 94111  
415.677.9058  
[prk@kitchenlegal.com](mailto:prk@kitchenlegal.com)

Exhibit 4

# **THIS NOTICE AFFECTS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.**

## **NOTICE OF PENDENCY OF CLASS ACTION**

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#### ***What is the lawsuit about?***

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#### ***What are the specific claims?***

- Failure to pay employees for off-the-clock time spent inside the stores, including time employees spent waiting for loss prevention or "bag check" inspections
- Failure to allow employees to take all of their rest breaks
- Failure to pay premium overtime wages
- Failure to timely pay all wages due at the end of employment
- Failure to maintain accurate pay records
- Misclassification of sales employees as being exempt from premium overtime pay

#### ***Class Action Ruling***

The Court has ruled that this lawsuit may be maintained by the representative plaintiffs on behalf of the following class:

"All former sales associates and cashiers who were employed in defendants' retail and outlet stores in the state of California between May 30, 2002 and the conclusion of this action."

The Court also certified two subclasses of former employees of defendants:

1. "All members of the class who were sales associates and were misclassified as exempt inside commissioned salespeople.
2. All members of the class who were sales associates from whom the defendants took back earned wages through its arrears program."

***Estimated Recovery***

Plaintiffs seek to recover back wages, including unpaid overtime wages, civil penalties and punitive damages, as well as interest on these amounts, attorney's fees and litigation costs. Individual class member's recoveries will depend on several factors, including the amount of time the class members worked for the defendants.

***Rights and Obligations of Class Members***

If you fall with the definition of the class, you will automatically become a class member in this lawsuit. **If you wish to be a member of the class, you do not need to do anything further at this time, and you should NOT SEND an exclusion request.**

As a class member:

- You will be represented by the named class representatives and the attorneys representing the class. You will not be charged for this representation. If the plaintiffs win, plaintiffs' counsel will ask the Court that they be paid reasonable compensation for their representation of the class. However, you may enter an appearance through your own attorney, or on your own, by mailing a Notice of Appearance to the Clerk of the Court, 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, CA 94102. You may also ask the Court for permission to appear as named class co-representative.
- You will receive notice of any rulings affecting your membership in the class and notice of any proposed settlement or dismissal of class claims or any judgment rendered.
- You will be bound by a judgment or other final disposition of the class lawsuit, whether that disposition is favorable or not.
- You will participate, upon meeting any prerequisites set by the Court, in a distribution of any monetary damages recovered in the litigation.
- You should retain all records and documents pertaining to the subject matter of this case, including all wage and employee documents.



- You should notify plaintiffs' counsel, by email to [prk@kitchinlegal.com](mailto:prk@kitchinlegal.com), of any change in your mailing address or email address.
- You will be deemed to have consented to defendants' disclosing certain personally identifiable information about you from defendants' records to counsel for the class so they may represent you and determine the amount of any monetary recovery to which you may be entitled.

***Election to Not Participate in the Class ("Opting Out")***

If you want to be excluded from the class, you must send a written notice of your intent to exclude yourself from the class, with the information below, by mail postmarked no later than \_\_\_\_\_, 2008, to: The Law Office of Patrick R. Kitchin, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111.

Please include your full name, your social security number, your current mailing address, phone number, email address, and a statement that you wish to be excluded from the *Otsuka v. Polo Ralph Lauren* lawsuit.

The choice to exclude yourself from the class has certain consequences, and you may wish to consult an attorney regarding this choice. If you elect to be excluded: (1) you will not be bound by any judgment in the case and will retain any claims you may have against defendants, subject to applicable statutes of limitations, and (2) you will not share in any monetary or other recovery that might be paid if the class representatives are successful in trial or from any settlement.

***Status and Further Information***

This lawsuit may continue on for a year or more. If you have any questions concerning the matters in this notice, or if you have corrections or changes to your name or address (so future notices about this case will reach you), please contact plaintiffs' counsel at The Law Office of Patrick R. Kitchin, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111, [prk@kitchinlegal.com](mailto:prk@kitchinlegal.com), (415) 677-9058.

The pleadings and all other records of this litigation may be examined and copied any time during the regular office hours in the office of the Clerk of the Court at the Clerk of the Court, 450 Golden Gate Avenue, San Francisco, CA 94102.

**DO NOT CALL OR WRITE THE COURT FOR ADDITIONAL INFORMATION ABOUT THE CASE.**

Exhibit 5

# Rosenthal & Company LLC

300 Bel Marin Keys Blvd., Suite 200, Novato, CA 94949

Ph: 415-884-1100 or 800-211-5201

Fax: 415-382-6565

web: [www.RosenthalCo.com](http://www.RosenthalCo.com)

e-mail: [DanR@RosenthalCo.com](mailto:DanR@RosenthalCo.com)

## ROSENTHAL & COMPANY LLC

### CLASS ACTION SETTLEMENT ADMINISTRATORS

Rosenthal & Company specializes in providing notice and administering settlements relating to:

**Antitrust Matters**  
**Employment**  
**Insurance Services**  
**Toxic Settlements**

**Consumer Products and Services**  
**Financial Services**  
**Securities Litigation**

This brochure provides background information about our company and summarizes how we administer class action settlements.

### **BACKGROUND**

Rosenthal & Company was founded by Dan Rosenthal in April 2000. Previously, Dan was Managing Director of a leading settlement administration company, where he developed the methodology, computer systems and staff to manage the company's Consumer class action administrations since 1988.

Since the beginning, Rosenthal & Company has recruited the best people to manage the functions of Operations, Information Technology and Settlement Fund Accounting. Our company now has more than seventy staff members consisting of experienced claims administration professionals, claims processing and call center support specialists, data management and telephone system experts and skilled computer/Internet programmers.

**In our first six years, we have been retained to administer over 600 settlements and notice procedures, with an aggregate settlement amount well over 2 billion dollars.** Over the years, the Rosenthal team has collectively managed hundreds of administrations for class action settlements, Attorneys General, District Attorneys and Equal Employment Opportunity Commission cases. We now have been appointed to administer cases with class members that range in numbers from under 22 to over 22 million.

### **OUR ADMINISTRATION PROCEDURES**

#### **The Plan**

The Rosenthal & Company methodology for claims administration begins with the planning process. We pre-plan all facets of an administration: setting up the class member database; designing, printing and mailing notices and claim forms; publishing summary notices; setting up and managing telephone response systems; address searches; claims processing; claimant communications; settlement distributions; and final accounting. Our job is to take care of the details and keep you informed about the progress of your case.

When we first discuss a pending administration with you, we offer our thoughts about how it would best be implemented. Then we develop the plan specifics, and provide you with a written proposal including a description of the work to be performed, its cost and timing. Based on our experience, we include an estimate of the number of claims that might be filed.

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### **Class Member Database Setup/Case Management System**

We translate the class member data into our case management system. When necessary, we consolidate data in the notice list by removing duplicate names and addresses and retaining the information pertinent to the claims. Prior to mailing we update the addresses using the National Change of Address system.

Our case management system tracks communications to and from all class members, the status of all claims received, and all disbursements. This is a dynamic system that is constantly updated as new class member information is developed.

### **Notice and Claim Form Design, Printing and Mailing**

Our recommended claim form design incorporates pre-printing class members' names and addresses, as well as all other information pertinent to the claim. By pre-printing this information, we are able to significantly reduce claims processing time and cost, and to significantly increase processing accuracy.

We format the notice and claim form and proof-read them before presenting them for your approval. Once approved, the notices and claim forms are printed and mailed by the most efficient method available.

We take pride in designing notices in ways to minimize printing and postage costs while at the same time maximizing readership and readability.

### **Summary Notice Publication**

DANART Communications, a division of Rosenthal & Company, is our in-house advertising agency. Since 1986, DANART has planned and purchased media space and time for more than 1,000 class action cases. We plan media schedules, negotiate rates, set type, write and record scripts, and produce the materials for insertion in newspapers and magazines, for airing on broadcast stations worldwide and for dissemination on the Internet. We also obtain the affidavits of publication and provide declarations documenting the published notices.

### **E-Mail Notification**

Sending notices via e-mail can be an inexpensive way to provide large classes with notices and claim forms. We would like to share our e-mail notification experience with you.

### **Web Site Development and Maintenance**

We have full capabilities to develop web sites for notification and claim form dissemination, including the technology to file claims on line as well as to capture names and addresses which are then pre-printed on the downloaded claim forms.

### **Class Member Address Searches**

As required, we conduct address searches for returned undelivered mail by accessing credit bureau header record data as well as demographic information on CD ROMs and various Internet web sites.

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**Telephone Support Systems**

We customize our Call Center operations to handle class member requests for information and claimant inquiries regarding filed claims. Our telephone support specialists have instant access to all class member and claimant information while on-line with callers. For large volume cases, we work with a number of vendors who provide automated voice-response systems for information dissemination and claim form requests. We also have foreign language capabilities in all of our telephone support systems.

**Claims Processing**

Our claims procedures have been developed over the past eighteen years. At the heart of these procedures are experienced Case Managers, well-trained staff and our case management software that provides all the details for every class member at the press of a button.

Throughout the claims procedure, statistics are reported to the parties on a weekly basis. These statistics include the number of notices mailed, mail received, claims processed, and claims paid. Our reports can also include any other metric that is appropriate for your particular case.

**Settlement Funds Management**

With your input, we develop an investment strategy and plan for your approval, set up the checking and interest-bearing accounts and/or investment vehicles, and track all deposits, interest earned and disbursements. We provide you with a monthly accounting of the funds, and when the administration has concluded we provide you with a complete financial accounting including the sources and uses of all funds and a listing showing the amounts disbursed by recipient.

**Payment of Claims -- Issuing Checks and Coupons**

Checks are printed on 8 1/2" x 11" safety paper stock, with the check on the top one-third and a transmittal letter on the bottom two-thirds. Unless required otherwise, the accounts are maintained at the Bank of America, and the bank's "Positive Pay" system is employed to detect fraudulently cashed checks.

Our banking systems are set up to download cash check information from the bank on a weekly basis. In this way, we know which checks have cleared the bank as of the previous week. This is especially helpful when claimants call regarding lost checks. We reissue checks as needed.

We design and implement coupons with built-in fraud prevention, and can provide in-house systems and procedures for coupon redemptions.

**Tax Return Preparation and Filing**

Rosenthal & Company employs Certified Public Accounting firms that specialize in settlement fund taxation to prepare the required settlement fund Federal and State income tax returns and to provide advice regarding settlement fund allocations.



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Class Action Settlement Administrators

## **SELECTED CASES ADMINISTERED BY ROSENTHAL & COMPANY**

Rosenthal & Company has been appointed to administer and/or provide notice for the following settlements, among many others:

### **Consumer Products and Services:**

Apple iPod Cases  
Buzby v. Best Buy Stores  
Howard et al. v. Ford Motor Company  
Mikhail v. Toshiba America  
Polacsek v. Debicated Consumer Counseling  
Tuck v. Whirlpool Corp. & Sears, Roebuck & Co.

Bayhille v. Jiffy Lube  
Chamberlan v. Ford Motor Company  
Jin v. Toshiba America  
Mink v. Maytag Corporation  
Sternberg & Gordon v. Apple Computer, Inc.  
UCAN v. Capital One Bank

### **Antitrust Cases:**

California Art Commission Cases  
California Carbon Fiber Cases  
California Flat Glass Cases  
California Indirect Purchasers MSG Antitrust Cases  
California Polychloroprene Cases  
eMag Solutions v. Toda Kogyo Corp.  
Mercedes Dealers Antitrust Litigation

California Automotive Refinishing Paint Cases  
California Environmental Technologies Cases  
California High Fructose Corn Syrup Cases  
California Methionine Cases  
California Sorbate Prices Cases  
Fox & Lowell v. American Cyanamid Company  
PRK / Lasik Consumer Litigation

### **Financial Services:**

Cervantes v. Mitsubishi Motors Credit  
Cope v. Bank One Corporation  
Nickel v. Bank of America  
Prata v. GE Capital Corp.  
Sullivan v. Shearson CA Raddison Plaza Partners

Collins v. Chrysler Financial Company  
Edell v. Bank of America  
Prata v. Bank One, N.A.  
Seaman v. Wells Fargo  
Von Tress v. Norwest Mortgage, Inc.

### **Insurance Cases:**

Enfield v. Old Line Life Insurance  
Gularte v. Fremont Life  
Loma Linda v. Farmers Insurance  
Nellis v. Farmers Insurance  
Semler v. Pacific Life Insurance

Forestiere v. West Coast Life Insurance  
Johnson v. Property and Casualty Insurance  
Medi-Cal Outpatients Cases  
Nellis v. Mid-Century Insurance  
Wilson v. Mercury Casualty Company

### **Securities Class Actions:**

Network Associates Securities Litigation

Transmeta Corporation Securities Litigation

### **Employment Cases:**

Albrecht v. Rite Aid  
Bates v. UPS  
Boleyn v. The GAP  
Frank v. United Airlines, Inc.  
Gladfelder v. Sears  
Mitchell v. Metropolitan Life Ins. Co.  
Nash v. Olive Garden  
Sweeny v. Silicon Graphics Inc  
Zuckman v. Allied-Nationwide

Archie v. UPS  
Bell v. Farmers Insurance Exchange  
Carr & Shields v. Starbucks Corporation  
Gianetto v. Computer Science Corporation  
Maloney v. Bank of America  
McKinnon v. Best Buy Stores  
Olivas et al. v. Smart & Final Stores  
Whittington v. Home Depot

### **Attorneys General and District Attorneys:**

Multistate Publishers Clearing House Settlement  
People v. American Supply

North Carolina AG v. The Associates  
People v. Gloria Marshall America, Inc.

### **Toxic Settlements**

Ajax Boiler & Heater Co.

Rhodes v. MBA Polymers, Inc.